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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/821,942	03/30/2001	Sanjeev Midha	8246	8169

27752 7590 06/25/2004

THE PROCTER & GAMBLE COMPANY
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EXAMINER	
CHANNAVAJJALA, LAKSHMI SARADA	
ART UNIT	**PAPER NUMBER**
1615	

DATE MAILED: 06/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/821,942	MIDHA ET AL.	
	Examiner	Art Unit	
	Lakshmi S Channavajjala	1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *31 March 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-12,14-18 and 20-22* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-12, 14-18 and 20-22* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Receipt of RCE request dated 3-31-04; amendment and remarks dated 3-22-04 is acknowledged.

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3-31-04 has been entered.

Claims 1-12, 14-18 and 20-22 are pending.

Claim Rejections - 35 USC § 103

Claims 1-12, 14-18 and 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over US **5,637,291** to Bara et al (Bara) in view of **GB 22600985** ('GB '985) OR Bara and US **6,537,537** to Deckner et al (Deckner).

Bara teaches hair care and skin-care compositions, for example eye line care, tinted gel compositions etc., comprising hollow particles of an expanded copolymer of vinylidene chloride and acrylonitrile, or vinylidene chloride, methacrylate and acrylonitrile, wherein the internal cavity is filled with a gas or a hydrocarbon such as isobutene (col. 2, lines 56-67 and col. 3, lines 1-20). In particular, Bara teaches the particles sold under the name EXPANCEL 551 DE 50, 551 DE 20, 551 DE 12, etc. (col. 3, lines 26-42), all of which are also described in the instant application (page 6). Bara also teaches the particle size, density as claimed in the instant claims 3-4 and 13-14. It is implicit from the teachings of Bara, that the polymer particles possess a

thermoplastic wall and thus meet the limitations of claims 5-9. Bara uses the same polymer for the preparation of the particles. All the examples in columns 7-9 recite water, which meets the claim limitation, "aqueous carrier". The amounts of particles and the polymers disclosed in examples in columns 6-9 of Bara are within the claimed ranges. Bara does not explicitly state "leave-in" composition, as claimed. However, Bara teaches mascara (col. 5, lines 38-42), which reads on leave-on hair composition. Bara teaches gelling agents such as Carbopol, polyacrylates, polymethacrylate, carboxymethyl cellulose, hydroxypropylmethylcellulose, xanthan gums etc., (paragraph bridging cols 3-4 and examples in col. 7-9), in general. Bara fails to specifically teach the instant hydrophobically modified polymer. However, the general teachings of Carbopol include the hydrophobically modified Carbopol polymers as well as unmodified Carbopol, suitable as gelling agents in the compositions.

GB '985 teaches hair conditioner composition comprising hydrophobically modified acrylic polymers for conditioning hair (page 4-6). GB '985 teaches that the polymers are water-soluble, insoluble or dispersible (page 7). The polymers of GB '985 also include acrylic or acrylate polymers that are hydrophobically modified. The hair conditioning properties of the hydrophobically modified polymers are described on pages 15-20 suggesting that the polymers provide good conditioning, durability, no build-up characteristics, and less bleed-off effect in hair coloring compositions. Therefore, it would have been obvious for one of an ordinary skill in the art at the time of the instant invention to substitute the conventional polymers such as polyacrylamides, cellulose derivatives or acrylic or acrylate polymers of Bara with the hydrophobically modified copolymers because GB '985 provide great flexibility in preparing cosmetic compositions and in particular, provide excellent hair conditioning in various hair care

products such as shampoos, conditioners, coloring products etc. Accordingly, one of an ordinary skill in the art would have expected improved conditioning effect with the composition of Bara, containing hydrophobically modified polymers.

ALTERNATIVELY, Deckner teaches a cosmetic composition comprising a cyclodextrin, salicylic acid, silicones, hydrophobic polymers and gelling agents. Among the gelling agents, Deckner teaches water-soluble polyalkenyl polyether crosslinked polymers of polyacrylic acid, such as Carbopol 934, 940, 950, 951, 980, 981 etc., and the hydrophobically modified crosslinked acrylic acid polymers such as Carbopol 1382, 1342, Permulen TR-1 (all hydrophobically modified polymers also disclosed in the instant specification) (col. 17, lines 1-24). Accordingly, it would have been obvious for one of an ordinary skill in the art at the time of the instant invention to use an appropriate Carbopol polymer such as Carbopol 1382, Permulen etc., in the hair care composition of Bara because Deckner suggests that Carbopol polymers are very useful as gelling agents owing to their excellent stability over both normal and elevated characteristics.

Instant claims 20-22 recite a method of increasing the hair volume by applying the claimed composition. While Bara does not explicitly state increasing the hair volume, it would have been obvious for one of an ordinary skill in the art at the time of the instant invention that any material (such as a mascara or hair protecting or soothing) when applied to hair would obviously result in increased volume of hair as compared to the hair volume before application.

Response to Arguments

Applicant's arguments filed 3-22-04 have been fully considered but they are not persuasive.

Applicants have incorporated the same arguments that were made in response to final office action (dated 9-23-03), by reference. Further, applicants state that instant claims are amended to restrict the particle size and argue that for reasons presented the claims are allowable over prior art of record. Applicants arguments are not persuasive because unlike applicants' argument that instant invention is intended as a leave-in volumizing product, instant claims 1-12, and 14-18 are only directed to a composition and do not recite the limitation "volumizing". Further, the pre-amble "leave-in" does not carry a patentable distinction. With respect to the argument that Bara includes microspheres to ensure the dispersion of oily and water phases and not to increase hair-to-hair interactions is not persuasive because the limitations are not claimed. Applicants' argument that all of the examples of Bara contain at least 5% oily phase is moot because as admitted by applicants, Bara does teach a lower range of 0.1% and the disclosure of the prior art is not restricted to examples and instead should be considered on the whole. With respect to applicants' arguments that Bara teaches hair smoothing, and also the composition of GB used for conditioning decreases the volume of the hair, are not persuasive because instant specification (page 55) clearly states that instant composition is a hair conditioner (please refer to the "Method of preparation of the conditioner formulation" on page 55). Further, claim 18 specifically states leave-in hair CONDITIONING composition. This is also supported by applicants own specification on page 55, lines 17-18 that the instant composition does providing conditioning benefits such as smoothness, reduced friction. With respect to the method claims,

applicants argue that volume refers to increased friction and perception of fullness. However, page 55 of specification states hair conditioning such as reducing friction as well as increasing volume. If applicants' arguments that hair smoothness does not render the hair volume to beincreased then, It is unclear how applicants achieve these opposite effects (reducing friction and well as increase volume) at the same time, using the same compostion. Applying the same standard as applicants does, then the combination of Bara and GB '985 that results in a hair conditioning composition (reduced friction and smoothness) should also result in increased friction and thus increase the hair volume. Therefore, for above reasons rejection has been maintained.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lakshmi S Channavajjala whose telephone number is 571-272-0591. The examiner can normally be reached on 7.30 AM -4.00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K Page can be reached on 571-272-0602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Lakshmi S Channavajjala
Examiner
Art Unit 1615
June 24, 2004